

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

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No. 154

MANUEL D. TALLEY, PETITIONER,

vs.

CALIFORNIA

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ON WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF  
THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS  
ANGELES

PETITION FOR CERTIORARI FILED APRIL 16, 1959

CERTIORARI GRANTED JUNE 29, 1959

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**IN THE MUNICIPAL COURT OF LOS ANGELES  
JUDICIAL DISTRICT, COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA**

Booking No. —

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

VS.

MANUEL D. TALLEY, Defendant

COMPLAINT—Filed April 2, 1958

Personally appeared before me, the undersigned, who, first being duly sworn, complains and says: That on or about March 22, 1958, at and in Los Angeles City, in the County of Los Angeles, State of California, a misdemeanor, to-wit: Violation of Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000) was committed by Manuel D. Talley (whose true name to affiant is unknown), who at the time and place last aforesaid, did wilfully and unlawfully in the City of Los Angeles, distribute a handbill which did not then and there have printed on the cover and on the face thereof, the name and address of the person who printed, wrote, compiled or manufactured the said handbill, and the name of the person who caused the same to be distributed and the true names and addresses of the owners, managers or agents of the fictitious person and club which sponsored said handbill.

All of which is contrary to the law in such cases made and provided, and against the peace and dignity of the People of the State of California. Said Complainant therefore prays that a warrant may be issued for the arrest of said Defendant that he may be dealt with according to law.

Subscribed and sworn to before me on April 2, 1958.

C. McClendon.

George J. Barbour, Clerk of the Municipal Court of Los Angeles Judicial District, in said County and State.

By Francis P. O'Keefe, Deputy Clerk. (MC 28.06).

[Tel. 5]

H. SIMMONS  
H Simmons

MUNICIPAL COURT PROCEEDINGS

Date

APR 2 1958

DEPT. NOTIFIED TO APPEAR IN DIV. 30A ON

4/8/58 @

9:30 a. m.

Defendant in Court duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged

and enters his plea of guilty of the offense charged

Denies—Admits—prior conviction charged.

Bail fixed at \$ Dollars

APR 8 1958

Cont Apr 28. Div 30A 11 AM.

Div 30A

Continued for Plea

Defendant released OR

APR 28 1958

Simmons overruled  
leave to file written motion

Pleas not guilty. Jury trial in Div. 7 on 5-27  
at 9 a. m. Bail \$ 25

MAY 27 1958

Latally

Defendant released OR

ATTY

H. SIMMONS

J. W.

DIV 6

Dept paid \$5. not HT denied

4/27/58

\$1000

\$1000 2 day 0 - stay 330 PM  
Cash appeal bond \$83210 P

81437

No.

APR 28 1958

WITNESSES:

Sgt. C. McClendon #14

IN THE  
MUNICIPAL COURT

of

Los Angeles Judicial District,  
County of Los Angeles, State of California

The People of the State of California,  
PLAINTIFF,

vs.

MANUEL D. TALLEY,

DEFENDENT

COMPLAINT

Filed April 2, 1958

GEORGE J. BARBOUR,

Clerk of the Municipal Court  
of Los Angeles Judicial District,

County of Los Angeles, State of California.

By

*Francis J. O'Keefe*  
Deputy Clerk

Issued by

ROGER ARNEBERGH

City Attorney

By

*John M. Concanon*  
J. M. Concanon Deputy City Attorney

580

M.

against him and

charged.

11 A.M.

IV 30A

100

in grave

27

and 08

16

H. T. Daniel

330 P.M.

10 P

[fol. 68] IN THE MUNICIPAL COURT OF LOS ANGELES  
JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF  
CALIFORNIA

Division No. 6

Hon. John G. Bienes, Judge

No. 81,437

Via. Sec. 2806, LAMC

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MANUEL D. TALLEY, Defendant

**Reporter's Transcript of Proceedings**

Tuesday, May 27, 1958

**APPEARANCES:**

For the People: Richard E. Stewart, Esq., Deputy City Attorney.

For the Defendant: Simmons & Simmons, by: Herbert W. Simmons, Esq.

[fol. 9] Los Angeles, California, Tuesday, May 27, 1958,  
10:45 A. M.

The Court: People vs. Manuel D. Talley.

Mr. Simmons: May I have just a second, your Honor?

Mr. Stewart: Has there been a jury waiver by the defendant in this case?

Mr. Simmons: No, he hasn't personally waived.

The Court: Mr. Talley, do you want the Court to try your case without a jury, or do you want a jury trial?

The Defendant: A court trial, your Honor.

The Court: Do you join in the waiver, gentlemen?

Mr. Stewart: Join in the waiver, your Honor.

Your Honor, I believe we have a stipulation in this particular matter. I discussed it with the defendant and his counsel. The People and the defendant will stipulate that the defendant was distributing handbills on the day in

question, March 22, 1958. The stipulation, I believe, is that Sergeant McClellon and three other citizen witnesses received handbills distributed by the defendant in this case; and I believe it is stipulated that the two handbills I have in my hand at this time will be received in evidence as exhibits.

Mr. Simmons: So stipulated, your Honor.

#### OFFER IN EVIDENCE

The Court: Very well, they will be received as one exhibit, People's Exhibit 1.

[fol. 10] (Whereupon the documents referred to, to wit, two handbills, were received in evidence as People's Exhibit 1.)

Mr. Stewart: The People will rest on that stipulation, your Honor.

The Court: Very well.

Mr. Stewart: Also, if your Honor please, that this particular act took place in the City of Los Angeles, namely, at 55th and Holmes, which is in the City of Los Angeles.

The Court: Do you join in that portion of the stipulation?

Mr. Simmons: I'm sorry?

The Court: That the act of distribution occurred in Los Angeles City?

Mr. Simmons: We will join in that portion of the stipulation.

Mr. Stewart: Thank you.

Mr. Simmons: The defendant will call Mr. Lacour.

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EARL LACOUR, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Earl Lacour.

The Clerk: Spell your last name.

[fol. 11] The Witness: L-a-c-o-u-r.



Direct examination.

By Mr. Simmons:

Q. You are employed by the A & D Supermarket, is that correct?

A. That is correct.

Q. How long have you been so employed?

A. About six years.

Q. And this A & D Market is the market that is located at 5501 Holmes Avenue, is that right?

A. That's right.

Q. I hand you Exhibit A and ask you to read that—read this document where it says “We are boycotting A & D Market at 5501 Holmes Avenue”——

Mr. Stewart: Your Honor, at this point I am going to object to this last question——

The Court: What is the basis of it?

Mr. Stewart: On the grounds that it is immaterial to the issues in the case—irrelevant as to what the exhibit states.

The Court: He is merely asking the witness to read it; that was the question.

Mr. Stewart: All right, I will withdraw the objection.

[fol. 12] By Mr. Simmons:

Q. Did you read that, is that right?

A. Yes, I read it.

Q. And that is the same market that you work at, is that right?

A. Yes.

Mr. Simmons: I have in my hand, your Honor, a document; may it be marked Defendant's A for identification?

The Court: Defendant's A for identification.

By Mr. Simmons:

Q. I hand you this document and ask you to examine it; have you examined it?

A. Yes.

Q. Have you ever seen that document or similar documents?

A. Similar; I wouldn't say this is the exactly one.

Q. But you have seen similar documents, is that right?

A. True; yes.

Q. Can you tell us what that document is?

A. Well, this is just advertising a food sale.

The Court: It is what?

The Witness: Advertisement of food sales.

By Mr. Simmons:

Q. An advertisement of food sales for the A & D Market, is that right?

[fol. 13] A. Yes, A & D Market.

Q. And that's the market you are employed at, is that right?

A. That's right.

Q. Now, during your employment at this A & D Market have similar documents or leaflets been distributed?

A. Yes, we distribute—

Mr. Stewart: Wait. Again, your Honor, I will object to this question on the grounds it is irrelevant and immaterial to the issues in this particular case.

The Court: How is it relevant?

Mr. Simmons: Your Honor, we intend to rely, as an additional defense, on the constitutionality of this, and also the unequal enforcement of the law.

The Court: Objection is overruled.

By Mr. Simmons:

Q. Will you answer the last question?

A. We put up handbills for advertisement.

Q. And these handbills are distributed on the public street, is that right?

A. That's right.

Q. What is your experience as to how often these handbills are put out?

A. Every weekend.

Q. And every weekend they are distributed on the public streets, is that right?

[fol. 14] A. That's right.

Q. To your knowledge has there ever been any criminal prosecutions for putting out these handbills?

A. No, not advertising sales.

Q. There has been no prosecution, is that right?

A. No.

Q. And it is your testimony that these handbills are similar--

A. They are similar, but it is not ours.

Q. They vary as to content, is that right?

A. Yes.

#### OFFER IN EVIDENCE

Mr. Simmons: May this be introduced (indicating)?

The Court: It will be received as Defendant's A.

(Whereupon the document referred to, to wit, an advertising handbill, was received in evidence as Defendant's Exhibit A.)

Mr. Simmons: That's all.

The Court: Any questions?

Mr. Stewart: Yes, two questions, your Honor.

#### Cross-examination.

By Mr. Stewart:

Q. Mr. Lacour, you have identified this as an announcement of a food sale?

A. Yes.

Q. Now, would you read the printing or writing on the [fol. 15] bottom of that exhibit.

A. Yes: "A & D Supermarket, 55th and Holmes Avenue." Could I say something?

The Court: Not right now; you will have to wait for a lawyer to ask you a question.

By Mr. Stewart:

Q. This is a circular put out by the market for whom you work?

A. Not that particular circular, no.

Q. Not this particular circular?

A. No, because the ones that are put out either is made by the Carnation Company, and they are stamped at the bottom, "Carnation Company."

The Court: Wait just a minute; read that last, please.

(Whereupon the record was read by the reporter.)

The Court: Keep your voice up, Mr. Lacour.

By Mr. Stewart:

Q. Then to your knowledge, Mr. Lacour, the A & D Supermarket did not put that poster up?

A. Not that particular bill, no.

Q. And they did not cause it to be distributed to your knowledge?

A. Not that particular bill.

Mr. Stewart: This being the case, your Honor, I move that the exhibit be stricken from the evidence.

[fol. 16] The Court: Motion is denied.

Mr. Stewart: No further questions.

Mr. Simmons: May this document that I have in my hand be marked for identification, your Honor?

The Court: Yes.

Redirect examination.

By Mr. Simmons:

Q. I hand you another document and ask you to examine that; have you examined it?

A. Yes.

Q. Do you recognize it?

A. No, I don't.

Q. You don't recognize this at all?

A. No, I don't.

Mr. Simmons: That's all.

The Court: Anything further?

Mr. Stewart: I have no questions.

The Court: You may step down.

Call your next witness.

Mr. Simmons: The defendant calls Manuel Talley to the stand.

[fol. 17] MANUEL D. TALLEY, the defendant herein, called as a witness by and on his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Manuel D. Talley.

Direct examination.

By Mr. Simmons:

Q. Mr. Talley, I hand you Defendant's A for identification and ask you to look at that; have you seen that document or similar documents before?

A. I have.

Q. And where did you see that?

A. Well, I have seen a handbill identical to this one pasted in the glass doorway of the A & D Market.

Q. Have you seen similar ones?

A. Yes, on several different weekends I have seen different handbills all very similar in format.

Q. Now, at the bottom of these handbills, do they have any other identification mark than "A & D Market"?

A. No.

Q. At the bottom do they have any statement as to who wrote, compiled, or manufactured the handbill?

A. Up until, oh, about the latter part of March there was no indication on the handbills that were pasted in the [fol. 18] glass door as to who had written or printed them.

Q. Or on these other handbills you refer to, there was no indication?

A. There was no indication, no.

Q. This was after your arrest in this case?

A. Yes, after my arrest in this case I noticed on the handbill —

Q. Just after your arrest you noticed the change, is that right?

A. That is right.

Q. Did these handbills that you saw before your arrest, did they have on them "the herein, who causes the same to be distributed —"

A. There was no name of anyone indicating that that person was causing the handbills to be distributed.

Mr. Simmons: Counsel, will you stipulate that the A & D Market, a supermarket, is a fictitious name?

Mr. Stewart: I will stipulate—yes, so stipulate.

Mr. Simmons: A & D Supermarket; is that right, Counsel?

The Court: Do you know that it is, Mr. Simmons?

Mr. Simmons: Yes, your Honor.

The Court: It isn't a corporation?

Mr. Simmons: I don't know that, your Honor.

Mr. Stewart: I can't stipulate to that, your Honor; I [fol. 19] don't know.

The Court: The reason I asked the question is that I feel quite sure; Counsel, if you knew it and were to state that to Counsel, as an officer of the Court, he would be glad to stipulate with you.

Mr. Simmons: No, I can't actually say that it is not a corporation.

The Court: Very well.

By Mr. Simmons:

Q. Now, Mr. Talley, calling your attention to after the date of your arrest on this charge, I want you to examine this document which has been marked Exhibit B for identification, and I ask you to examine that—

The Court: Apparently he has done so.

By Mr. Simmons:

Q. Now, can you tell us what that document is?

A. This is a handbill advertising a food sale at the A & D Supermarket, 55th and Helms.

Q. On that was there a change from the prior handbills?

A. The change in format that I noticed is a statement along the lower right as saying that it's printed by the Hollywood Lithograph—

Q. —Company; is that right?

A. That's right.

Mr. Simmons: That's all.

[fol. 20] The Court: Any questions.

## OFFER IN EVIDENCE

Mr. Simmons: May that document be introduced as Exhibit B in evidence, your Honor?

The Court: Yes, I will receive it.

(Whereupon the document referred to, to wit, a handbill, was received as Defendant's Exhibit B in evidence.)

## Cross-examination.

By Mr. Stewart:

Q. Is it your testimony that you observed this particular handbill being distributed by the A & D Supermarket?

The Court: This is Exhibit B you are talking about now.

The Witness: It is my testimony that I have seen handbills identical to this handbill pasted in the doorway—pasted on the glass door of the A & D Supermarket; this is not the handbill, however, that was pasted on the door. This was received from a person living in the community who stated that he had received it; it was on his gate, as a matter of fact.

By Mr. Stewart:

Q. In fact, on the bottom of this handbill we have the statement, "A & D Supermarket"?

A. "A & D Supermarket"?

Mr. Stewart: Nothing further.

[Vol. 21] Redirect examination.

By Mr. Simmons:

Q. You say this person stated to you it was on his gate, is that right?

A. Yes; well, as a matter of fact—

Mr. Stewart: I object to anything that a person stated, on the grounds that it is hearsay.

Mr. Simmons: This is brought out on cross-examination.

The Court: Yes, you developed it on your cross-examination. He testified to what somebody told him. It's in evi-

dence, and it wasn't objected to, and no motion to strike was made.

By Mr. Simmons:

Q. This was on a public thoroughfare, is that right, this gate?

A. That is right; it's a private dwelling house.

Mr. Simmons: That's all.

The Court: You may step down.

Call your next witness.

Mr. Simmons: Call Jack Fortson to the stand.

Jack C. Fortson, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

Vol. 22] The Witness: Jack C. Fortson, Fortson, J.

Direct examination.

By Mr. Simmons:

Q. You are employed by the A & D Market?

A. No, I'm not.

Q. Have you been employed by them?

A. Never.

Mr. Simmons: No questions.

The Court: Any cross-examination?

Mr. Stewart: No questions.

The Court: You may step down.

Mr. Simmons: I'd like to call the first witness back for one question, your Honor.



Evid. Lacour, recalled as a witness by and on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows:

Further direct examination.

By Mr. Simmons:

Q. Mr. Lacour, you have been previously sworn in this case; who is the owner of the A & D Supermarket?

A. Victor Mirolla, M-i-r-o-l-l-a.

Q. And he is the sole owner of the store?

[fol. 23] A. Yes.

Q. Is he doing business under the fictitious name of "A & D Supermarket"?

A. That is right.

The Court: It isn't a corporation?

The Witness: It's not a chain corporation, no.

The Court: Do you know whether or not Mr. Mirolla is the owner of a corporation doing business under that name?

The Witness: It's between him and his dad and his mother.

The Court: Is it a corporation; do you know?

The Witness: Yes, the three of them.

The Court: All right.

The Witness: And he is not the one sole owner.

By Mr. Simmons:

Q. Is it a corporation or a partnership?

The Court: Or do you know?

The Witness: I really don't know—no, I don't. I know he is the manager of the market.

By Mr. Simmons:

Q. Have you ever seen any corporation papers around the store?

A. No.

The Court: If you are trying to prove one or the other, as a matter of record, Mr. Simmons—it shouldn't be proven that way; that is, assuming that the law has been followed.

[fol. 24] They would have to file at the proper place a certificate of doing business under a fictitious firm name, or the corporation commissioner's office would have the corporate files—one or the other.

Mr. Simmons: May I speak to Counsel for a moment?

(Brief interruption.)

Mr. Simmons: All right; that's all.

Mr. Stewart: No questions.

The Court: You may step down.

Call your next witness.

Mr. Simmons: Nothing further, your Honor.

The Court: Any other witnesses?

Mr. Stewart: None for the People.

#### COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Simmons: Your Honor, I would like to have permission to find out whether or not this is a corporation, and submit it to your Honor.

The Court: Well, we have got to dispose of these things some time, Mr. Simmons. Let us assume for the purposes of this matter it is a fictitious firm name.

Mr. Simmons: All right; my client tells me that he did search the records, and he found that it was a fictitious—

The Court: All right; I will assume that it was a fictitious firm name.

Mr. Simmons: May that be part of the evidence?

The Court: It will be part of the evidence on your [fol. 25] behalf.

Mr. Simmons: All right, submitted.

Mr. Stewart: Submitted, your Honor.

The Court: Your defense of unconstitutionality based upon the lack of uniform enforcement, pursuant to the Yick Wo vs. Hopkins case, and the other cases, which have come down since—a number of them—by the California courts falls short of proof.

As far as the violation is concerned, it is apparent there is a violation here.

Mr. Simmons: In addition to that, your Honor, my main argument is the unconstitutionality of the statute; but in fairness to Counsel I am not going to argue that strenuously. I imagine it is the first time he saw this case, and

the case has not been decided by the Supreme Court of the United States at this particular point, but it was decided in *People vs. Arnold*—a case that we handled directly—

The Court: What is the citation?

Mr. Simmons: CRA 3141, an opinion handed down on August 26, 1954. The Court decided against us in that case.

The Court: Against your contention?

Mr. Simmons: Against our contention, and we think the Appellate Department of the Superior Court was incorrect. [fol. 26] The Court: Who am I to argue with them? Those wise ones up there know much more about these things than I do.

Mr. Simmons: I know you would be bound by that, your Honor.

The Court: I am bound by their decisions.

The defendant is found guilty.

Mr. Simmons: Your Honor, time for sentence will be waived, and we would like to make at this time a motion for new trial.

The Court: Very well.

Mr. Simmons: On the grounds of the unconstitutionality of the statute and insufficiency of the evidence, and the unequal enforcement of the law.

The Court: Motion will be denied.

Mr. Simmons: May sentence be imposed at this time, your Honor?

The Court: Do you know anything about your defendant's background?

Mr. Simmons: Yes, I do. I have known the defendant personally the last twenty years, your Honor. As far as the defendant's criminal record, he was a conscientious objector during the course of the last conflict—

The Court: Well, that isn't a crime, is it?

Mr. Simmons: Well, he was at that time convicted of [fol. 27] being a conscientious objector—yes, it is a crime, your Honor; other than that, your Honor, this was his own personal conviction that got him involved.

#### SENTENCE

The Court: Ready for sentence?

Mr. Simmons: Yes, ready.

The Court: \$10 or two days.

Mr. Simmons: May we have a stay of execution on that?

The Court: No, I do not give stays of execution on fines.

Mr. Simmons: Your Honor, we wanted to file—for purposes of filing an appeal, your Honor.

The Court: Well, you can pay the \$10, and when you taken an appeal I will fix the bond on—

Mr. Simmons: But if we pay the fine now it becomes moot, your Honor.

The Court: No, it doesn't.

Mr. Simmons: This is always my understanding, that if the sentence would be served then the point would become moot.

The Court: If he does his time in jail, perhaps; but I don't think it is moot—that is not my understanding. I think if you will check it, you will find—

Mr. Simmons: May we deposit the \$10 and have it held until we file our appeal, because we will file it this afternoon immediately; but it is my understanding—I [fol. 28] have had experience at one time—

The Court: A stay until 3:30 p.m.

Mr. Simmons: Thank you.

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[fols. 29-30] Reporter's Certificate to foregoing transcript omitted in printing.

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[fol. 31] Judges Certificate to foregoing transcript omitted in printing.

[fol. 32]

PEOPLE'S EXHIBIT # 1

National Consumers Mobilization, Box 6533, Los Angeles  
55, Calif.

Pleasant 9-1576

We are boycotting the A and D Market at 5501 Holmes Avenue.

Why?

Because he carries in his store goods that come from manufacturers who will not offer equal employment opportunity to Negroes, Mexicans, and Orientals.

What are the unfair goods?

Our entire unfair list is at the center of this sheet. Articles with \*'s by them are sold in grocery stores.

Why not trade at A & D Market but not buy the black-listed goods?

If you buy a pound of meat, you help keep this business open so he can sell unfair bread or milk.

This boycott will probably last for six months. Do not trade at A & D Market until this boycott is over.

National Consumers Mobilization is boycotting all of these firms as part of its program for fair employment:

Automobile Dealers

J. B. Finney

Baking Companies

Helms

\* Van de Kamp

\* Bowie Pie Co.

\* Bradley Pie Co.

\* Langendorf-Barbara Ann

Beverage Companies

\* Arrowhead

\* Nehi

Milk Companies

\* Knudson

\* Challenge

\* Sold in grocery stores

Candy Companies

Juliette

Sally's Homemade

Food Companies

\* Frito \*

\* Kraft Food

Department Stores

Coulters

Haggarty's

Men's Stores

Desmonds

Shoe Stores

Wetherby-Kayser

C. H. Baker

Insurance Co.'s

National Life and Accident of Nashville, Tenn.

I believe that every man should have an equal opportunity for employment no matter what his race, religion, or place of birth.

I wish to support this program. Please enroll me as a member of National Consumers Mobilization.

Name

Telephone

Address

Zone ( ).

Dues: 25¢ per month. Amount paid with this application

National Consumers Mobilization, Box 6533, Los Angeles 55, Calif.

For further information, call Pleasant 9-1576.

---

\* Sold in grocery stores.

[fol. 33] NATIONAL CONSUMERS MOBILIZATION

Post Office Box 6533  
Los Angeles 55, California  
Pleasant 9-1576

Don't buy anything at all between now and September 1, 1958, at the:

A AND D MARKET,  
5501 Holmes Avenue,  
Los Angeles.

The fair employment boycott will be continued from now until September 1, even though our pickets may not be in front of the store at all times.

Anything you buy at the A & D Market undermines the boycott.

Nick Mirolla, operator of the A and D Market, says he will close his market and move before he will cooperate in this fair employment program, which will open more jobs for Negroes, Mexicans and Orientals.

The A and D Market is helping the following employers to discriminate by selling their particular brands of goods:

Challenge milk  
Kraft foods  
Fritos  
Bowie pies  
Langendorf bakery goods  
Nehi beverages

Other firms being boycotted by National Consumers Mobilization are:

Automobile Dealers

J. B. Finney

Baking Companies

Helms

\* Van de Kamps

\* Bradley Pie Co.

\* Barbara Ann

\* Sold in grocery stores.

## Beverage Companies

• Arrowhead

## Milk Companies

• Knudson

## Candy Companies

Juliette

Sally's Homemade

## Department Stores

Coulters

Haggarty's

## Men's Stores

Desmonds

## Shoe Stores

Wetherby-Kayser

C. H. Baker

## Insurance Co.'s

National Life and Accident of Nashville, Tenn.

(Here follow 2 Photolithographs, side folios 34, 35)

---

• Sold in grocery stores.



DEFENDANT'S EXHIBIT "A"

# SPRING FOOL DERBY



**PLACE YOUR BETS** you can't lose on our  
fine foods Top quality costs no more here Look  
over this list of buys for easy winter  
into-spring meals

**LADY'S CHOICE  
GRAPE  
JELLY**  
**2 36**  
LB. JAR

**Party Fruit Salad**

(Makes 6 to 8 servings)

- 1 package (3 ounces) lemon-flavored gelatin
- 1/2 cup hot fruit cocktail syrup
- 1/2 cup lemon juice
- 2 1/2 cups (12 can) fruit cocktail
- 1 1/2 cups (121 can) pineapple tidbits
- 1 cup chopped nuts
- 1/2 cup chopped maraschino cherries
- 1 cup undrained Carnation Evaporated Milk
- 2 tablespoons lemon juice

Dissolve gelatin in hot fruit cocktail syrup. Cook slightly. Add lemon juice, fruit cocktail, pineapple, nuts and cherries. Mix well. Chill until consistency of unbeaten egg white. Chill Carnation in refrigerator of tray until soft ice crystals form around edges of tray (10 to 15 minutes). Whip until stiff (about 1 minute). Add 2 tablespoons lemon juice. Whip very stiff (about 2 minutes longer). Fold whipped Carnation into gelatin mixture. Spoon into 1 1/2 quart mold. Chill until firm (about 2 hours). Unmold on lettuce and garnish with maraschino cherries.

**FREE** - For your copy of Carnation's latest recipe booklet, send to Mary Blake, Carnation Co., Dept. GS-164, Los Angeles 19, California.

**FROZEN FOODS**

**RUPERT  
SOLE 53**  
**NORTHERN  
PIKE 49**

**CERTI-  
FRESH  
BREADED  
SHRIMP 59**

**HUNT'S  
CATSUP 1 1/2**  
14 OZ. BTL

**HUNT'S SOLID DARK  
TOMATOES 4 1/2**  
NO 2 1/2 CANS

**KRAFT  
MAYONNAISE 65**  
OT JAR

**PORK  
SHOULDER  
ROAST 39**  
6 LB. 1 R AVG

**END CUT  
PORK  
CHOPS 55**

**TODAY'S FAVORITE  
LEAN MEATY  
PORK  
STEAKS 59**

**SURF 65**  
**PORK & BEANS 5 1/2**  
**MAKES 4 QTS 29**

**Fresh Fruits & Greens  
POTATOES 5 29**

**LARGE SIZE  
GRAPEFRUIT 4 25**

**GREEN HEAD  
CABBAGE 4 16**

**GARDEN FRESH  
VEGETABLES AT ALL  
TIMES**

**FOODCRAFT KOSHER  
PICKLES 22**

**JAR**

**Party Fruit Salad**

Makes 6 to 8 servings

- |  |  |
|--|--|
| 1 package 3 ounces<br>Vanilla-flavored gelatin | 1 cup chopped nuts                     |
| 1/2 cup hot fruit<br>cocktail syrup            | 1/2 cup chopped maraschino<br>cherries |
| 1/2 cup lemon juice                            | 1 cup gelatinized<br>Carnation         |
| 2 1/2 cups #2 can<br>hot cocktail              | 1/2 cup evaporated milk                |
| 1/4 cup #211 can<br>orange juice               | 2 tablespoons lemon juice              |

Thaw gelatin in hot fruit cocktail syrup. Cook slightly. Add lemon juice, fruit cocktail, pineapple, nuts and cherries. Mix well. Chill until consistency of unbeaten egg white. Whip Carnation in refrigerator tray until soft ice crystals form around edges of top (10 to 15 minutes). Whip until stiff (about 1 minute). Add 2 tablespoons lemon juice. Whip very stiff (about 2 minutes longer). Fold whipped Carnation into gelatin mixture. Spoon into 1 1/2 quart mold. Chill until firm (about 2 hours). Unmold on lettuce and garnish with maraschino cherries.

**FREE** For your copy of Carnation's latest recipe booklet, send to: Mary Blake, Carnation Co., Dept. G5-166, Los Angeles 19, California.

**FROZEN FOODS**

**RUPERT SOLE** 53¢  
16

**NORTHERN PIKE** 49¢  
16

**CERTI FRESH**  
8 oz BREADED SHRIMP 59¢  
8 oz FISH STICKS 33¢

**ECIALS for  
URS FRI SAT  
N MAR 20-  
22-23**



**MONEY ORDERS  
BY your UTILITY BILLS  
AT A&D MARKET**

**TOMATOES**



**4** NO 2'S  
CANS \$1

**MAYONNAISE**



**65**¢  
OT JAR

**MEATS**

**PORK SHOULDER ROAST** 39¢  
16



END CUT

**PORK CHOPS**

**55**¢  
16

**TODAY'S FAVORITE**

LEAN MEATY

**PORK STEAKS**

**59**¢  
16

MISSISSIPPI BRAND

**BACON**

CELCO  
PKG

**59**¢  
LB

VAN CAMPS CHUNK STYLE

**TUNA**

**4** CANS \$1

**Fresh Fruits & Greens**

**POTATOES**

**5** 29¢

**GRAPEFRUIT**

**4** 25¢

GREEN HEAD

**CABBAGE** 4¢  
16

**GARDEN FRESH  
VEGETABLES AT ALL  
TIMES**

FOODCRAFT KOSHER

**PICKLES**

15 1/2 oz JAR **23**¢

DUTCH

**CLEANSER**

**2** GIANT  
SIZE  
CANS **23**¢

**A and D SUPER  
MARKET...**

**55<sup>TH</sup>  
AND  
HOLMES  
AVENUE**



# TODAY'S BEST BUY... FRYERS

SPECIALS FOR THURS. FRI. SAT. SUN. MARCH 27 28 29 30

Menu of the week - Roast leg of lamb and all the trimmings... You'll find "headliners" in all our meats. Always tender, they go further too! We pre-trim excess fat and waste before weighing.

## MEAT SPECIALS

U.S.D.A. GRADE A

**FRYERS** 39¢  
WHOLE OR CUT-UP

**BACON** 55¢  
TABLE BRAND 1-LB PKG

**LAMB CHOPS** 79¢  
THICK-CUT

**PICNIC HAMS** 2.50  
CUDANUS CANNED 4 LBS

**GROUND CHUCK** 55¢  
Fresh Lean

## PRODUCE

**POTATOES** 29¢  
U.S. NO. 1 WHITE ROSE 5 POUNDS

**HAMS** 25¢  
RED VELVET 3 LBS

## Lamb Savory with Rice

- 1 tablespoon butter
- 1/4 cup chicken stock
- 1/2 cup mushrooms
- 1/2 cup onion
- 1/2 cup large salt
- 1/2 cup carrots
- 1 cup 1/2 pound ground
- 1 cup 1/2 pound ground
- 1/2 cup salt
- 1/2 cup pepper
- 1/2 cup onion
- 1/2 cup carrots
- 2 cups cooked lamb
- 1/2 cup rice
- 1/2 cup cooked rice

Melt butter in saucepan. Add mushrooms and cook until browned. Stir in flour. Add chicken stock, stirring constantly. Cook over low heat until thickened. Add cheese, salt, pepper, thyme and onion. Stir until cheese melts. Add cooked lamb. Heat thoroughly. Serve over cooked rice.

**FREE** For your copy of Carnation's latest recipe booklet, send to: Mary Blake, Carnation Co., Dept. 05-104, Los Angeles 19, California.

**MAGIC GARDEN GRAPEFRUIT JUICE** 4.49  
46 OZ CANS

**WATCH FOR OUR NEW STORE HOURS**  
COMING SOON!  
6 A.M. TO 2 A.M.

**APPLE PIES** 25¢  
SIMPLE SIMON 9-INCH

**MAHATMA long grain RICE** 49¢  
3-LB CELLULOSE BAG

**TUNA** 1.49  
SEA GLORY chunk-style 4 CANS

**FLOUR** 1.09  
GOLD MEDAL 10 LBS

**SURF** 26¢  
REG. SIZE

**CARNATION INSTANT NONFAT DRY MILK** 29¢  
MAKES 4 QUARTS

**INSTANT COFFEE** 1.15  
MAXWELL HOUSE 6-OZ JAR

**TOMATO PASTE** 15.1¢  
HUNT'S 6-OZ CANS

**PEACHES** 4.1¢  
HEARTS DELIGHT



CUDAHY'S CANNED  
PICNIC HAMS  
4-LBS

**\$2.99**

Fresh lean  
GROUND CHUCK

**55¢**

**PRODUCE**

U.S. NO. 1 WHITE ROSE

**POTATOES**

5 POUNDS **29¢**



RED VELVET  
**YAMS**

3 LBS **25¢**

Green  
**PIPPIN  
APPLES**

5 LBS **29¢**

Mary's Place, Carnation Co. Dept. P-144  
Los Angeles 19, California

MAGIC GARDEN  
**GRAPEFRUIT  
JUICE**

4 46-OZ  
CANS **1.19**

WATCH FOR OUR  
**NEW**  
STORE HOURS

COMING SOON!  
**6 A.M. TO  
2 A.M.**

SIMPLE SIMON  
**APPLE  
PIES**

9-INCH **59¢**



2 TALL CANS **27¢**  
4 SMALL CANS **27¢**

REG  
SIZE **SURF 26¢**



CARNATION INSTANT  
NONFAT DRY MILK  
MAKES  
4-QUARTS

**29¢**



MAXWELL HOUSE  
**INSTANT  
COFFEE**  
6-OZ JAR

**1.15**

HUNT'S  
**TOMATO  
PASTE**

6-OZ CANS

**15¢**

HEART'S DELIGHT  
**PEACHES**

NO. 2 1/2 CANS

**4.1¢**

HEART'S DELIGHT  
SOLID-PACK  
**TOMATOES**

NO. 303 CANS

**6.1¢**

SUNSHINE, H.H. CO.  
**CRACKERS**  
1 LB. BOX

**35¢**

**BIG TREAT**  
VANILLA OR  
FUDGE RIDDLE

1/2-GAL

**3.15**

RUPERT'S  
**SOLE**

**53¢**

**A and D SUPER  
MARKET...**

**55<sup>TH</sup>  
AND  
HOLMES  
AVENUE**

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[fol. 36] IN MUNICIPAL COURT OF LOS ANGELES JUDICIAL  
DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

CR. A: 3865

No. 81437

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MANUEL D. TALLEY, Defendant

DOCKET ENTRIES

Apr. 2, 1958. Complaint filed and sworn to by C. Mc Clendon charging the defendant with having on March 22, 1958 at Los Angeles City, in the County of Los Angeles, State of California, committed a misdemeanor, to wit:

Violation of Section 28.06 of the Los Angeles Municipal Code.

Apr. 2, 1958. Defendant notified to appear in Division 30-A on April 8, 1958 at 9:30 A.M.

Apr. 8, 1958. Motion filed.

Cause called. Judge Donald M. Redwine presiding. Both parties ready. People represented by J. L. Denny (D.C.A.). Defendant represented in propria persona.

Defendant in court, duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged and asks time to plead. Ordered to appear and plead April 28, 1958 at 11:00 A.M. in Division 30-A.

Defendant released on own recognizance.

Apr. 28, 1958. Cause called. Judge Evelyn J. Younger presiding. Both parties ready. People represented by J. L. Denny (D.C.A.). Defendant in court and represented by H. Simmons, attorney.

Demurrer overruled. Leave to file written motion granted.

Defendant in court, duly arraigned informed of the charge against him and of his legal rights. Defendant gives true name as charged and enters his Plea of Not Guilty of the offense charged above.

Trial set for May 27, 1958 at 9:00 A.M. in Div. 7.

Defendant released on his own recognizance.

May 27, 1958. In this case Grace A. Summers, Reporter is ordered to take down proceedings as provided by law. Division 7 convened at 9:00 A.M. Cause called. Judge David W. Williams presiding. Both parties ready. People represented by Donald R. Bringgold (D.C.A.). Defendant in court and represented by H. Simmons. J. B. Nisbet, Deputy Clerk.

[fol. 37] May 27, 1958. People and defendant with counsel in open court each personally waives jury trial.

Transferred to Division 6 for trial.

In this case Norman Tulin, Reporter is ordered to take down the proceedings as provided by law.

Division 6 convened at 9:30 A.M. Cause called. Judge John G. Barnes presiding. Both parties ready. People represented by R. E. Stewart (D.C.A.). Defendant in court and represented by H. Simmons. C. Hegler, Deputy Clerk.

People and defendant with counsel in open court each personally waives jury trial.

Counsel stipulated that the handbills were distributed on day in question, that Sergeant McClennon and three witnesses received the handbills, and that two handbills be received in evidence. Further stipulated that event occurred at 55th and Holmes Street, in City of Los Angeles.

People rest.

Witnesses sworn and examined for Defendant:

Earl Lacour  
Manuel D. Talley  
Jack Fortsan  
Earl Lacour (recalled)

Defendant rests.

People's Exhibits:

1. (2) two handbills

Defendants Exhibits:

A. Handbill marked for identification.

Defendant's Exhibit "A" now ordered in evidence.

B. Handbill marked for identification.

Defendant's Exhibit "B" now ordered in evidence.

Cause submitted.

Defendant adjudged Guilty of the offense charged.

[fol. 38] May 27, 1958. Defendant waives time of sentence.

Motion of defendant for a new trial denied.

### JUDGMENT

Defendant in court and having been duly arraigned for judgment and there being no legal cause why judgment should not be pronounced.

It is adjudged and ordered by the court that as a punishment for the crime of Violation of Section 28.06 of the Los Angeles Municipal Code, the defendant Manuel D. Talley shall pay a fine in the sum of \$10.00 and that in default of the payment of said fine prior to 5:00 P.M. of 5-27-58 said defendant shall be imprisoned in the City Jail of the City of Los Angeles at the rate of one day's imprisonment for each five dollars of said fine until said fine is wholly satisfied, not exceeding however 2 days and that said defendant shall be discharged from imprisonment upon payment of such remaining portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed or upon the expiration of said maximum number of days, whichever event occurs sooner.

Stay to 3:30 P.M.

May 27, 1958. Notice of Appeal and Stay of execution filed.

Execution of judgment and sentence hereby stayed pending Appeal. Appeal bond set at \$10.00.

Cash Appeal Bond of \$10.00 posted on Receipt #83210P.

June 2, 1958. Statement on Appeal filed with Affidavit of Service By Mail.

June 16, 1958. Reporter's Transcript filed.

June 24, 1958. Hearing to Settle Statement on Appeal and Reporter's transcript is set for July 2, 1958 at 9:30 A.M. in Div. 6.

Notice mailed with Affidavits of Service by Mail.

[fol. 39] Jul. 2, 1958. In the following case Helen Roberts Reporter is ordered to take down proceedings as provided by law.

Cause Called. Judge John G. Barnes presiding. Both

parties ready. People represented by Jack Scott (D.C.A.). Defendant not in court but represented by George A. P. Simmons.

Hearing on notice to Settle Statement on Appeal and Reporter's Transcript.

Stipulation by Counsel that Reporter's Transcript shall constitute the Statement on Appeal.

The Court does now Settle and allow the Foregoing Statement on Appeal and Reporter's Transcript and certifies that the same is a true and correct statement of the Proceedings had in the Above Entitled Action.

---

Clerk's Certificate to foregoing paper omitted in printing.

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[fol. 40]                      [File endorsement omitted]

IN THE MUNICIPAL COURT OF THE STATE OF CALIFORNIA IN  
AND FOR THE COUNTY OF LOS ANGELES

C.R. A: 3865

No. 81437

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MANUEL TALLEY, Defendant.

NOTICE OF APPEAL AND STAY OF EXECUTION — Filed May 27,  
1958

To the Clerk of the Above-named Court:

The defendant in the above-entitled cause hereby appeals to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles from the order of the above-entitled court made and entered on the 27 day of May 1958, denying defendant's motion for a new trial and from the final judgment



of conviction rendered and pronounced by the above-entitled court on the 27th day of May, 1958.

Dated: May 27, 1958.

Simmons & Simmons, by Herbert W. Simmons Jr.,  
Attorney for Appellant.

STAY OF EXECUTION—Filed May 27, 1958

Execution of judgment and sentence in the above-entitled case is hereby stayed pending appeal.

John G. Barnes, Judge, Municipal Court.

Dated: May 27, 1958.

Bail is set for \$10.00.

[Vol. 41]

[File endorsement omitted]

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

C.R. A: 3865

No. 81437

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and  
Respondent,

vs.

MANUEL TALLEY, Defendant and Appellant

GROUND OF APPEAL AND DESIGNATION OF RECORD REQUEST  
FOR PREPARATION OF REPORTERS TRANSCRIPT—Filed June  
2, 1958

To the Honorable Municipal Court of Los Angeles  
Judicial District, to City Attorney, City of Los Angeles,  
and to County Clerk.

Whereas, the defendant, Manuel Talley, having on the  
27th day of May, 1958, duly taken an appeal from the  
judgment therein entered in the above entitled court on  
the 27th day of May, 1958,

You and each of you, are hereby notified that said defendant, Mammel Talley, in the above entitled action now presents this, his statement of grounds of appeal and points upon which he relies upon appeal from the above entitled Court to the Superior Court of the State of California as follows, to wit:

1. That Section 2806 of the Municipal Code is unconstitutional in that said code section abridges defendant's freedom of speech and thus is in violation of the California State Law and the United States Federal Law as regards to freedom of speech.

2. That there is unequal enforcement of law in the [fol. 42] application of Section 2806 of the Municipal Code to this defendant. That on account and because of the unequal enforcement of the law as it pertains to this defendant, appellant has been deprived of his constitutional rights.

Defendant now designates what portions of the reporter's transcript are necessary to be transcribed to fairly present the points relied upon by the defendant.

1. All of the evidence received and taken down by the court reporter during the trial of the case, including all rulings and remarks of the court and objections made by either side during the course of the trial and the rulings and comments of the court thereon.

2. The proceedings heard at the time the defendant made his motion for a new trial and the rulings and comments of the court thereon.

3. The proceedings at the time the defendant took his appeal.

The defendant now asks that the court make an order for the transcription thereof and the defendant further asks that the clerk deliver to him within the time required by law a copy of the reporter's transcript, and also a copy of the transcript on appeal in said action.

Dated: June 2, 1958.

Simmons & Simmons, By Herbert W. Simmons, Jr.,  
Attorneys for Defendant.

[fol. 43] The Court does now settle and allow the foregoing Statement on Appeal and Reporter's Transcript and

certifies that the same is a true and correct statement of the proceedings had in the above entitled action.

Dated: July 2, 1958.

John G. Barnes, Judge of the Municipal Court.

[fol. 44] Affidavit of Service by Mail.

(Omitted in Printing).

[fol. 44a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 45] [File endorsement omitted]

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Superior Court No. CR. A: 3865

Trial Court No. 81437

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and  
Respondent

vs.

MANUEL D. TALLEY, Defendant and Appellant

OPINION—November 17, 1958

Appeal by defendant from order denying motion for new trial and judgment of the Municipal Court of the Los Angeles Judicial District, John G. Barnes, Judge. Affirmed.

For Appellant—Simmons & Simmons.

For Respondent—Roger Arnebergh, City Attorney, Philip E. Grey, Assistant City Attorney, William E. Doran, Deputy City Attorney.

Defendant was convicted of a misdemeanor, having violated the provisions of Los Angeles Municipal Ordinance No. 77,000, sec. 28.06, in that he distributed a handbill which

did not then and there have upon it the name and address of the person who printed, wrote, compiled or manufactured it, nor the same information as to the person who caused the same to be distributed, nor the true names and addresses of the owners, managers or agents of the fictitious person and club who sponsored the handbill. Defendant appeals from conviction on the ground that the ordinance violates U.S. Constitution, Amendments 14 and 1.

The appellate concedes that the decision in *People v. [fol. 46] Arnold* (1954), 127 Cal. App. 2d Supp. 844, disposes of his contentions adversely but asks reconsideration and reversal of the view there taken, submitting substantially the same brief that was then submitted to this Court. We adhere to the decision in the case of *People v. Arnold*, and the conviction of appellant must be affirmed.

The essence of the right of "free speech" is derived from the historical connotation of the phrase, not from giving uncontrolled effect to the adjective "free". It means essentially "freedom from censorship" or "prior restraints" which prevent free discussion, (*Joseph Burstyn, Inc. v. Wilson* (1951), 343 U.S. 495, 503; *People ex rel Barton v. Amer. Auto. Ins. Co.* (1955), 132 Cal. App. 2d 317, 326), and such "free discussion" historically had to do with political questions, or governmental action. (*United States v. Dennis* (1950), 183 F. 2d 201, aff'd, *Dennis v. United States* (1950), 341 U.S. 494). It has never meant that a speaker was free from accountability for what is written or printed, except as otherwise provided by law, such as in the privilege afforded legislative or judicial proceedings.

The present ordinance places no restriction upon what can be said, who can say it, or where it can be said, or when it can be said. The requirement that the desired information be placed upon a handbill, does not serve in any way to restrict what may be said, except the purely speculative personal possibility that someone might hesitate to identify himself with his own statements therein contained.

It therefore would seem that the requirement is reasonably germane to the exercise of the police power since it provides a means of determining and securing respon-

sibility for what is said, for as stated in California Constitution Art. I sec. 9 (and in the constitutions of 43 other states) the right of "free speech" is accompanied by correlative responsibility for its abuse. It will not do to say that the right is abridged because the law [fol. 47] provides a means to fix responsibility for abuses.

The authority of legislature to impose such regulations has not been regarded to be inconsistent with civil liberties, but essential to their preservation. Where the restriction promotes the welfare and good order of all the citizens of the state, it cannot be disregarded by the attempted exercise of some civil right for which protection is claimed. (Cf. C. J. Hughes in *Cox v. State of New Hampshire* (1940), 312 U.S. 569, 574, 61 S. Ct. 762, 765, 85 L. ed. 1049). Precensorship of what is said would be unconstitutional. It is equally clear that a state may by general and nondiscriminatory legislation regulate the times, places and manner of speech upon a street which would include the distribution of written speech; and may in other respects safeguard the peace, good order, and comfort of the community, without thereby invading the liberties protected by the 14th Amendment. (*Cantwell v. State of Connecticut* (1939), 310 U.S. 296, 303-304, 60 S. Ct. 900, 903, 84 L. ed. 1213, 1214, by a unanimous court.)

In *Corn, at Presiding Bishop et al. v. Cal. Cal. Parson, et al.* (1949), 19 Cal. App. 2d 636, appeal dismissed 338 U.S. 505, rehearing denied 338 U.S. 939, it was asserted that the ordinance of the City of Porterville restricting churches to zones other than the first residential zone was a law prohibiting the free exercise of religion, in violation of the 1st Amendment, as embraced in the 14th. In *American Communications Ass'n v. Davis* (1949), 339 U.S. 382, 397-398 (70 S. Ct. 674, 683, 94 L. ed. 325), Chief Justice Vinson referred to the Court's action in the *Porterville* case, as an instance in which there was no unlawful restriction. "When the effect of a statute or ordinance upon the exercise of First Amendment freedoms is relatively small and the public interest to be protected is substantial . . ." As said by Mr. Justice Reed in *Jones v. City of Opelika* (1941), 316 U.S. 584, 593-594, 62 S. Ct. 1231, 1237, 86 L. ed. 1691, "One man, with [fol. 48] views contrary to the rest of his compatriots, is

entitled to the privilege of expressing his ideas by speech or broadside to anyone willing to listen or to read.

But that hearing may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order."

It is said, "whenever state action is challenged as a denial of 'liberty,' the question always is whether the state has violated 'the essential attributes' of that liberty." . . . While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause that Clause postulates the authority of the states to translate into law local policies "to promote the health, safety, morals and general welfare of its people. . . . The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise." . . . "The boundary at which the conflicting interest balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side" . . . (Mr. Justice Frankfurter in *Carpenters & Joiners Union v. Ritter's Cafe* (1944), 315 U.S. 722, 726, 62 S. Ct. 807, 809, 86 L. ed. 1143, quoting from *Near v. State of Minnesota* (1930), 283 U.S.\* 697, 707, 708, 51 S. Ct. 625, 628, 75 L. ed. 1357).

The "points along the way" include *Schneider v. Irvington* (*Kim Young v. People of California*) (1939), 308 U.S. 147, 84 L. ed. 155, the statement relative to municipal power (84 L. ed. 160-161, 163, 165); *Niemotko v. Maryland* (1950), 340 U.S. 268, 272 et seq., Mr. Justice Frankfurter concurring opinion; *Dennis v. United States*, *supra*, 341 U.S. 494, 95 L. ed. 1137, 1160-1194; and *Thomas v. Collins* [vol. 49] (1944), 323 U.S. 516, 89 L. ed. 430, which is nearest to the question at bar. The analysis made<sup>2</sup> in the minority opinion in *Thomas v. Collins* of the nature of "pre-registration is akin to the present problem. No unconstitutional element was discerned. [The majority opinion links the question of identification with the right of assembly and petition. The injunction against it, based upon the lack of registration, was there held to be a restraint on both speech and assembly. Such an issue is not involved

here.] Compare also, qualifications for registration as voters, *Franklin v. Harper*, 205 Ga. 779, 55 S.E. 2d 221, app. dis. 339 U.S. 946, 70 S. Ct. 804, 94 L. ed. 1361; upon acquittal, refusal to redeliver records made under requirement, of fingerprinting and photographing, *State ex rel. Mavity v. Tyndall* (1947), 225 Ind. 260, 74 N.E. 2d 914, cert. den. 333 U.S. 834, 68 S. Ct. 669, 92 L. ed. 1118; regulation of posted prices (burden is upon assailant to show invalidity), *Merit Oil Co. v. Director of Division for Necessaries of Life*, 319 Mass. 301, 65 N.E. 2d 529; fingerprinting and photographing taxi drivers, *Norman v. City of Las Vegas* (1947), 64 Nev. 38, 177 P. 2d 442; vaccination as prerequisite to admission to school, *Sadlock v. Board of Education* (1948), 137 N.J.L. 85, 58 A. 2d 218.

In *People ex rel. Bryant v. Zimmerman* (1928), 278 U.S. 63, 73 L. ed. 184, 62 A.L.R. 785, a statute of the State of New York was sustained which required an organization to file with state officials its constitution, etc., and a roster of its membership. In *National Association for the A.C.P. v. Alabama* (1958), — U.S. —, 2 L. ed. 2d 1488, such a requirement of disclosure was held violative of the constitutional freedoms, under the facts of the case, but the Court did not overrule the *Zimmerman* case. It seems accepted that the names of the officials or employees of the organization could be validly required. One can find no differences between organizations, except that was considered malignant, and the other benign, and the situation [fol. 50] out of which the latter case evolved perhaps led to the fear that disclosure was only sought as a prelude to the deprivation of other constitutional rights; not a speculative but an imminent deprivation.

As "poins along the way", such cases give no adequate preview or prediction. The Constitutional restrictions are that no law shall be made "abridging the freedom of speech." No such freedom is abridged by the ordinance here in question. It has been urged in effect that not only the body of the constitutional provision but its spirit must be observed, if modern judicial trends are to be anticipated. A hundred years ago it was remarked, "Mr. Justice Daniel, of the Supreme Court of the United States, took occasion in a recent case, to disapprove of this course of reasoning, and relaxing something of the austere dignity of that au-

gust tribunal, remarked, that if the Judges were to adopt the notion that a law might be declared unconstitutional, because of its supposed repugnancy to the spirit of the Constitution, they ought to employ a rapping medium to procure authentic revelations from that spirit." (*Pattison v. Board of Supervisors* (1859), 13 Cal. 175, 182); to which Mr. Justice Wallace added, "The 'spirit of the Constitution,' . . . would partake too much of the personal spirit of the individual Judges chosen for the time being to interpret that instrument, and, chameleon-like, it would be apt to prove white, or gray, or red, or bluish, or bottle green, as the peculiar views of those having the spirit in their keeping might give it color . . ." (*Standard Oil Co. v. City of Stockton* (1871), 41 Cal. 147, 162).

Counsel have been able to refer us to no authentic rapping medium to reveal where the present ordinance would be directed by the United States Supreme Court by the "points along the way." We are of the opinion that the effect upon freedom of speech is too indirect and insubstantial, as involved in this case, to require us to hold the ordinance is unconventional.

By virtue of U.S. Constitution Art. VI, cl. 2, the Constitution of the United States and the laws made in pursuance thereof "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

In our sphere, this is our direct command, no less than that resting upon the United States Supreme Court which has jurisdiction in all cases arising under the Constitution. (Art. III, sec. 2, cl. 1.)

Upon the precise question in issue, the United States Supreme Court has not spoken. Under the policy announced for itself, and rather generally followed, it has undertaken to reweigh and balance the public interest and private right in each case. In a sense, this policy can never be divorced from the accompanying facts, and they, rather than a touchstone of principle, have produced holdings which may be "points in the line" but these are accompanied often by polemical discussion by individual members of the divided court, out of which proponents and opponents alike may find comfort, or by which the "points in the line" are obscured as general guides for future action. The announced



policy of decision requires that a court place itself in the position of the local legislature in each case, in determining and weighing the public interest, which is at least as compelling as private right. (Cf. Mr. Justice Frankfurter in *Dennis v. United States*, *supra*, 341 U.S. 494, 525 et seq.)

It is salutary and just rule that Courts in the first instance are entitled to rely upon the integrity of the legislative process and of the legislators, for they too, act under the injunctions of the federal constitution. (Constitution, Art. VI, cl. 3).

The wisdom of legislation is not a matter for the Courts, [fol. 52] unless on its face it is manifestly arbitrary or ultra vires. (*McCarthy v. City of Manhattan Beach* (1953), 41 Cal. 2d 879, 885-886). There is a presumption that the facts justify the classification of the activity concerned and that there has been a balancing of public and private interest. (*California Physicians' Service v. Garrison* (1946), 28 Cal. 2d 790, 803):

The burden is upon him who asserts the invalidity of the ordinance to show such an abuse of discretion on the part of the legislators as would justify the court concluding as a matter of law that the ordinance is unduly oppressive, in consideration of his constitutional rights, and not reasonably necessary to promote the general welfare of the community. (*Minnery v. City of Azusa* (1958), 164 A.C.A. 12, 25; *Serve Yourself etc. Assn. v. Brack* (1952), 39 Cal. 2d 813, app. dis. 345 U.S. 980).

The presumption of the constitutional validity of a statute does not disappear when the statute is challenged as violative of the First Amendment but is merely balanced by it. When the legislative body finds a public interest which justifies the banishment of anonymity, the presumption arises again in full force. (Paraphrasing *National Maritime Union of America v. Herzog* (1948), 78 F. Supp. 146, 155, affirmed 334 U.S. 854, 68 S. Ct. 1529, 92 L. ed. 1776).

The presumption of reasonableness attends State action. (*Salsburg v. State of Maryland* (1953), 346 U.S. 545, 553, 74 S. Ct. 280, 98 L. ed. 281, 289).

Opposition between the 14th Amendment and the ordinance should be such that a judge feels a clear and strong conviction of their incompatibility before the ordinance is declared void. (*National Maritime Union v. Herzog*, *supra*; *Denny v. Watson* (1952), (114 Cal. App. 2d 491, 495, app.

dis. 346 U.S. 803; *People v. Marine Products Co.* (1947), 77 Cal. App. 2d Supp. 929).

The judges in *People v. Arnold* did not and we now do not, [fol. 53] have such a strong and clear conviction.

The judgment and order denying motion for new trial are affirmed.

Dated November 17, 1958.

David, Judge.

I concur. We have no clear-cut decision by the U.S. Supreme Court on the supposed right to publish anonymously; two of their cases which may bear on the question are conflicting. See *New York ex rel Bryant v. Zimmerman* (1928), 278 U.S. 63, 73 L.ed. 184, 62 A.L.R. 785, and *N.A.A.C.P. v. Alabama* (1958), U.S. , 2 L.ed. 2d 1488. The distinction which Mr. Justice Harlan draws between the two seems to be that the members of N.A.A.C.P. are good guys and the members of Ku Klux Klan are wicked men.

Swain, Judge.

I DISSENT. Several propositions with respect to the problem before us, seem to me to stand established beyond argument, and to recognize them is to narrow the field in which reasonable minds may take opposing positions. The first is that the freedom of the press, protected by the Fourteenth Amendment and by Section 9 of Art. I of our State Constitution, extends to the particular type of printed matter known as "handbills". It is so stated in *Lovell v. City of Griffin* (1938), 303 U.S. 444, 452, 82 L.ed. 949, 954; and in *Young v. People* (1939), 308 U.S. 146, 84 L.ed. 155, a provision of the Los Angeles Municipal Code (sec. 28.01) that then declared that "No person shall distribute any handbill . . . upon any street . . ." was held to be prohibited by the Fourteenth Amendment. See, further, *Jamison v. State of Texas* (1943), 318 U.S. 413, 87 L.ed. 869.

Then, too, the fact that the section immediately involved essays to prohibit the *distribution* of handbills, and not [fol. 54] their *publication*, will not serve to save it. (*Ex parte Jackson* (1878), 96 U.S. 727, 733, 24 L.ed. 877, 879; *Lovell v. Griffin*, *supra*, 303 U.S. 444, 452, 84 L.ed. 949, 954; *Young v. People*, *supra*, 308 U.S. 146, 84 L.ed. 155.)

Again, as the cases already cited clearly establish, the protection of the two constitutions is against adverse action by city legislative bodies as well as by state legislatures.

Lastly, a mere reading of the section of the Municipal Code in question makes it clear that its effect is to abridge the freedom of the press (forbidden by the Fourteenth Amendment, as interpreted in the United States Supreme Court cases already cited) and to "restrain and abridge" the "liberty of the press", expressly forbidden by section 9, Art. I. Note the opening words of Municipal Code section 28.06: "No person shall distribute any handbill in any place under any circumstances. . . ." But for that which follows this would be an absolute prohibition. That which follows lifts the absolute prohibition, but only partially. Unless the name and address of the author, and of the one causing the distribution to be made, are given, there can be no distribution. The freedom of press is to that extent abridged.

Nor is this just a technical abridgement. It takes no vivid imagination to conjure up many a situation where one who sees an evil against which he would strike by written criticism, will refrain from doing so because of what he believes to be the sure consequences to himself or family if his name appears on the pamphlet. The right freely to use the printed word is not limited to those so moved that they will act regardless of consequences. The section just cannot be said not to abridge or restrict the right freely to use the press in order to present ideas.

It must be conceded, of course, that neither freedom of speech nor of the press is immune from every restriction. It [fol. 55] cannot be doubted that a city ordinance would escape the death penalty, imposed by the constitutions, that read: "No person shall paint any words upon the walls of any public building", and I am not overlooking the fact that the State Constitution, after declaring that "Every citizen may freely speak, write, and publish his sentiments on all subjects," added the words: "*being responsible for the abuse of that right*" before it ended the sentence with the prohibition: "and no law shall be passed to restrain or abridge the liberty of speech or of the press." The responsibility is *imposed* on him who exercises the right that is given. The section does not, as suggested in *People v.*

*Arnold* (1954), 127 Cal. App. 2d 844, 848, 273 Pac. 2d 711, 713-714, grant the right to those who *accept* the responsibility.

The purpose of the Municipal Code provision is fairly obvious; it is to make it easy for the state, or for any individual injured by a handbill, to pin the responsibility upon him who caused it to be made and distributed, by requiring him to leave a trail to his door. In order to accomplish this purpose in the relatively few instances where there has been an abuse of the right freely to communicate ideas by handbills, (and plainly defendant's handbill was not obscene, libelous, nor did it otherwise abuse the right), the Municipal Code would impose restraint upon all occasions where it is desired to use them. I remain convinced that this may not be done.

Bishop, Presiding Judge.

[fols. 56-62] [File endorsement omitted]

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS  
ANGELES

Superior Court No. CR A 3865.

Trial Court No. 81437.

On Appeal from the Municipal Court of the Los Angeles  
Judicial District, County of Los Angeles, State of  
California.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and  
Respondent,

vs.

MANCEL D. TALLEY, Defendant and Appellant

This cause having been argued and submitted and fully  
considered, judgment is ordered as follows:

JUDGMENT—Filed November 17, 1958

It is Ordered and Adjudged that the judgment and order  
denying motion for new trial made and entered in the  
Municipal Court of the Los Angeles Judicial District.

County of Los Angeles, State of California, in the above entitled cause be and the same are hereby affirmed.

\_\_\_\_\_, Judge.

I, Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that the foregoing is a true copy of the — — original judgment entered by said Court in the above entitled cause on the — day of —, 19 —, and now remaining of record in this Court.

Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, by — —, Deputy.

Witness my hand and seal of the Court, affixed this — day of —, 19 —.

[fol. 63] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 64] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1958

No. —

MANUEL D. TALLEY, Petitioner

vs.

PEOPLE OF THE STATE OF CALIFORNIA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—February 12, 1959

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 16, 1959.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of February, 1959.

[fol. 65] SUPREME COURT OF THE UNITED STATES

[Title omitted]

On petition for writ of Certiorari to the Appellate Department of the Superior Court of the State of California County of Los Angeles.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA  
PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI  
—June 29, 1959

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted and case transferred to the appellate docket as No. 1040.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as, though filed in response to such writ.

June 29, 1959.